

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2408 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE R.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 & 2: Yes 3 to 5: No

BAJAJ ELECTRICALS LTD

Versus

SAKRABHAI J PRAJAPATI

Appearance:

MR KS NANAVATI for Petitioner

MR HK RATHOD for Respondent No. 1

CORAM : MR.JUSTICE R.A.MEHTA

Date of decision: 02/03/98

ORAL JUDGEMENT

1. The respondent-workman was dismissed from service. In the Reference before the Labour Court, the Labour has granted reinstatement without backwages. The employer has challenged this award. During the pendency of the litigation, the award was stayed and the workman has been paid wages under section 17B of the Industrial Disputes Act.

2. The charges against the workmen have been held proved in a proper departmental inquiry. The Labour Court has accepted the validity of the inquiry and the findings. In fact, the workman had admitted the charges during the course of inquiry. The charges were that he had received refund of different amounts on different dates, totalling to Rs. 417.30 in respect of rebate on franking machine. He had also committed thefts of Rs. 500/- and Rs. 100/-.

3. The Labour Court had considered that the extreme punishment of economic death was too harsh and the small employee should be given an opportunity to reform himself and having regard to the admission of the workman and his repentance, the dismissal was required to be interfered with, according to the Labour Court.

4. On behalf of the employer, it is submitted that there are three acts of misconduct against the workman; the integrity of the workman is doubtful and the employer cannot be compelled to take back such person in service.

5. The learned Counsel for the petitioner has relied upon the judgment of the Supreme Court in the case of Shankerdas Vs. Union of India, AIR 1985 SC 772. In that case, a cash clerk was prosecuted for breach of trust in respect of a sum of Rs. 500/-. He had pleaded guilty and accepting the plea of guilt, the learned Magistrate had given him benefit of Probation of Offenders Act. The Government dismissed him from service as a result of the conviction.

6. The Supreme Court, considering that the workman was a victim of adverse circumstances wherein his son died, it was followed by another misfortune, his wife fell down from an upper storey and was seriously injured, then his daughter also fell seriously ill and that illness lasted for eight months and, thus, the misfortune dodged the accused for about a year and, therefore, under the force of adverse circumstances, he held back the money in question. Under such compelling circumstances, he could not deposit the money in question in time. Having regard to these facts and circumstances, the benefit of Probation of Offenders Act was given to him by the learned Magistrate. The Supreme Court, taking into consideration all these aspects, held that the disciplinary authority ought to have taken into consideration all these aspects and ought to have exercised the power fairly, justly and reasonably and in the facts of the case, the dismissal was termed whimsical by the Supreme Court and the workman was directed to be

reinstated.

7. In the present case, there are no such compelling circumstances. It is not an isolated event. The misappropriation is in respect of refund of franking machine. There are several different amounts on different dates; there are two other cases of thefts of Rs. 500/- and Rs. 100/- on different occasions. Having regard to all this, it would be impossible to say that the employer had acted arbitrarily or whimsically. In fact, even while exercising the discretion, such a workman could not have been reinstated. The Labour Court has erred in exercise of its discretion and substituting the punishment.

8. In the result, the petition succeeds and rule is made absolute by quashing and setting aside the judgment and award of the Labour Court.

mhs/-